

Case 8:23-bk-10898-TA Doc 127 Filed 12/26/23 Entered 12/26/23 17:17:38 Desc
|| Main Document Page 1 of 7

1 Joseph C. Delmotte (CA SBN 259460)
2 jdelmotte@aldridgepite.com
ALDRIDGE PITE, LLP
3 8880 Rio San Diego Drive, Suite 725
4 San Diego, CA 92108
Telephone: (858) 750-7600
Facsimile: (619) 590-1385

5 Attorneys for *Respondent/Secured Creditor*
6 THE BANK OF NEW YORK MELLON FKA THE BANK OF
7 NEW YORK SUCCESSOR TRUSTEE TO JPMORGAN CHASE
BANK, N.A., AS TRUSTEE FOR THE BEAR STEARNS ALT-A
TRUST, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-04

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION

11 In re
12 JEFFREY S. BEIER,
13 Debtor.
14
15
16
17
18
19
20
21
22

Case No. 8:23-bk-10898-TA

Chapter 7

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF OPPOSITION TO
OBJECTION TO PROOF OF CLAIM 2-
1 FILED BY THE BANK OF NEW
YORK MELLON, FKA THE BANK OF
NEW YORK SUCESOR TRUSTEE TO
JPMORGAN CHASE BANK, N.A., AS
TRUSTEE FOR THE BEAR STEARNS
ALT-A TRUST, MORTGAGE PASS-
THROUGH CERTIFICATES, SERIES
2005-04**

DATE: January 9, 2024
TIME: 11:00 a.m.
CTRM: 5b

411 West Fourth Street
Santa Ana, CA 92701

24 The Bank of New York Mellon, FKA The Bank of New York Successor Trustee to
25 JPMorgan Chase Bank, N.A., as Trustee for the Bear Stearns ALT-A Trust, Mortgage Pass-
26 Through Certificates, Series 2005-04 (“BONY”) respectfully requests that the Court take judicial
27 notice of the records and pleadings more particularly described below pursuant to the provisions

Case 8:23-bk-10898-TA Doc 127 Filed 12/26/23 Entered 12/26/23 17:17:38 Desc Main Document Page 2 of 7

1 of Rule 201(b) and Rule 201(d) of the Federal Rules of Evidence.

- 2 • **Exhibit A:** PACER docket for U.S. Bankruptcy Court Case No. 8:08-bk-12163-RK in the Central District of California, Santa Ana Division.
- 3 • **Exhibit B:** A copy of Debtor's filed Bankruptcy Schedules A and D with signed Declaration About an Individual Debtor's Schedules from Bankruptcy Case No. 8:08-bk-12163-RK.
- 4 • **Exhibit C:** Discharge Order from Bankruptcy Case No. 8:08-bk-12163-RK.
- 5 • **Exhibit D:** PACER docket for U.S. Bankruptcy Court Case No. 8:09-bk-11124-TA in the Central District of California, Santa Ana Division.
- 6 • **Exhibit E:** A copy of the Complaint to Quiet Title and Seeking Monetary Manages, Statutory Damages, Punitive Damages, Injunctive Relief and Declaratory Relief filed in adversary case No. 8:09-ap-01252-TA.
- 7 • **Exhibit F:** A copy of the Joint Stipulation and Motion for Order of Dismissal of Action filed in adversary case no. 8:09-ap-01252-TA.
- 8 • **Exhibit G:** PACER docket for U.S. Bankruptcy Court Case No. 8:10-bk-19081-TA in the Central District of California, Santa Ana Division.
- 9 • **Exhibit H:** A copy of Debtor's filed Bankruptcy Schedules A and D with signed Declaration About an Individual's Schedules from Bankruptcy Case No. 8:10-bk-19081-TA.
- 10 • **Exhibit I:** Copy of the case docket for Orange County Superior Court case number 30-2011-00463450-CU-OR-CJC, styled as *Beier v. BAC Home Loans Servicing, LP, et al.*
- 11 • **Exhibit J:** Copy of the case docket for Orange County Superior Court case number 30-2015-00788856-CU-OR-CJC, styled as *Beier v. The Bank of New York Mellon, et al.*
- 12 • **Exhibit K:** Copy of the Complaint filed in Orange County Superior Court case number 30-2015-00788856-CU-OR-CJC, styled as *Beier v. The Bank of New York Mellon, et al.*

Case 8:23-bk-10898-TA Doc 127 Filed 12/26/23 Entered 12/26/23 17:17:38 Desc
|| Main Document Page 3 of 7

- **Exhibit L:** Copy of the case docket for Orange County Superior Court case number 30-2017-00907172-CU-OR-CJC, styled as *Beier v. Bank of America, et al.*
- **Exhibit M:** Copy of Plaintiff's Second Amended Complaint for: (1) Violation of §2923.6; (2) Negligence; (3) Unfair Business Practices, B&P Code §17200 et seq.; and (4) Request for Declaratory Relief filed in Orange County Superior Court case number 30-2017-00907172-CU-OR-CJC, styled as *Beier v. Bank of America, et al.*
- **Exhibit N:** Copy of Defendants' Notice of Motion and Motion for Summary Judgment, or In the Alternative, Summary Adjudication of Plaintiff's Second Amended Complaint filed in Orange County Superior Court case number 30-2017-00907172-CU-OR-CJC, styled as *Beier v. Bank of America, et al.*
- **Exhibit O:** Copy of Judgment entered in Orange County Superior Court case number 30-2017-00907172-CU-OR-CJC, styled as *Beier v. Bank of America, et al.*
- **Exhibit P:** Copy of Opinion issued by Court of Appeal of the State of California, Fourth Appellate District in Case No. G058753 styled as *Beier v. Bank of America, et al.*
- **Exhibit Q:** Copy of case docket for Orange County Superior Court case number 30-2023-01312331-CU-OR-CJC, styled as *Beier v. The Bank of New York Mellon, et al.*
- **Exhibit R:** Copy of Complaint for: (1) Violation of 15 U.S.C. Section § 1641(f)(2); (2) Violation of 15 U.S.C. §Violation of §2924(a)(6); (4) Breach of the Convent of Good Faith and Fair Dealing; (5) Unfair Business Practices, B&P Code §§ 17200 Et. Seq; (6) Declaratory Relief filed in Orange County Superior Court case number 30-2023-01312331-CU-OR-CJC, styled as *Beier v. The Bank of New York Mellon, et al.*

Case 8:23-bk-10898-TA Doc 127 Filed 12/26/23 Entered 12/26/23 17:17:38 Desc
|| Main Document Page 4 of 7

- **Exhibit S:** Copy of the case docket for U.S. District Court, Central District of California (Southern Division – Santa Ana), case number 8:23-cv-00668-FWS-JDE, styled as Jeffrey S. Beier v. Bank of America N.A. et al.
- **Exhibit T:** PACER docket for U.S. Bankruptcy Court Case No. 8:23-bk-10556-TA in the Central District of California, Santa Ana Division.
- **Exhibit U:** A copy of Debtor’s filed Bankruptcy Schedules A and D with signed Declaration About an Individual Debtor’s Schedules from Bankruptcy Case No. 8:23-bk-10556-TA.
- **Exhibit V:** PACER docket for U.S. Bankruptcy Court Case No. 8:23-bk-10898-TA in the Central District of California, Santa Ana Division.
- **Exhibit W:** A copy of Debtor’s filed Bankruptcy Schedules A and D with signed Declaration About an Individual Debtor’s Schedules from Bankruptcy Case No. 8:23-bk-10898-TA.
- **Exhibit X:** A copy of the Notice of Motion and Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate filed in Bankruptcy Case No. 8:23-bk-10898-TA.
- **Exhibit Y:** A copy of the Chapter 7 Trustee’s Motion for Order: (1) Authorizing Sale of Real Property Free and Clear of Liens and Interests Pursuant to 11 U.S.C. §363(f); (2) Approving Overbid Procedures; (3) Approving Broker Compensation; (4) Authorizing Distribution of Sale Proceeds; (5) Determining that the Proposed Buyer and Overbidder Are “Good Faith Purchasers” Under 11 U.S.C. Section 363(m); and (6) Waiving 14 day Stay Imposed by Federal Rule of Bankruptcy Procedure 6004(h) filed in Bankruptcy Case No. 8:23-bk-10898-TA.
- **Exhibit Z:** A copy of the Opposition to Chapter 7 Trustee’s Motion for Order: (1) Authorizing Sale of Real Property Free and Clear of Liens and Interests Pursuant to 11 U.S.C. §363(f); (2) Approving Overbid Procedures; (3) Approving Broker Compensation; (4) Authorizing Distribution of Sale Proceeds; (5) Determining that the Proposed Buyer and Overbidder Are “Good Faith Purchasers” Under 11

Case 8:23-bk-10898-TA Doc 127 Filed 12/26/23 Entered 12/26/23 17:17:38 Desc Main Document Page 5 of 7

1 U.S.C. Section 363(m); and (6) Waiving 14 day Stay Imposed by Federal Rule of
2 Bankruptcy Procedure 6004(h) filed in Bankruptcy Case No. 8:23-bk-10898-TA.

3 • **Exhibit AA:** A copy of the Order Granting Chapter 7 Trustee's Motion for Order:
4 (1) Authorizing Sale of Real Property Free and Clear of Liens and Interests
5 Pursuant to 11 U.S.C. §363(f); (2) Approving Overbid Procedures; (3) Approving
6 Broker Compensation; (4) Authorizing Distribution of Sale Proceeds; (5)
7 Determining that the Proposed Buyer and Overbidder Are "Good Faith
8 Purchasers" Under 11 U.S.C. Section 363(m); and (6) Waiving 14 day Stay
9 Imposed by Federal Rule of Bankruptcy Procedure 6004(h) filed in Bankruptcy
10 Case No. 8:23-bk-10898-TA.

11 • **Exhibit BB:** A copy of the Objection to Proof of Claim 2-1 Filed by the Bank of
12 New York Mellon, FKA The Bank of New York Successor Trustee to JPMorgan
13 Chase Bank, N.A., as Trustee for the Bear Stearns ALT-A Trust, Mortgage Pass-
14 Through Certificates Series 2005-04; Declaration of Jeffrey Beier filed in
15 Bankruptcy Case No. 8:23-bk-10898-TA.

16 • **Exhibit CC:** A copy of the Chapter 7 Trustee's Report of Sale Pursuant to Rule
17 6004(f) of the Federal Rules of Bankruptcy Procedure. Filed in Bankruptcy Case
18 No. 8:23-bk-10898-TA.

19 Pursuant to Federal Rule of Evidence 201, the court may take judicial notice of
20 adjudicative facts, which are "either (1) generally known within the territorial jurisdiction of the
21 trial court or (2) capable of accurate and ready determination by resort to sources whose
22 accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). Notably, the Court may "take
23 judicial notice of facts that are a matter of public record." Hefner v. Chao, 2009 WL 2485754, *1
24 (S.D. Cal. 2009); Lee v. City of Los Angeles, 250 F. 3d 668, 689 (9th Cir. 2001); Mack v. South
25 Bay Beer Distrib., 798 F. 2d 1279, 1282 (9th Cir. 1986) (overruled in part on other grounds by
26 Astoria Federal Sav. and Loan Ass'n v. Solimino, 501 U.S. 104 (1991)).

27 The Court may take judicial notice of Exhibits A through CC because these documents
28

Case 8:23-bk-10898-TA Doc 127 Filed 12/26/23 Entered 12/26/23 17:17:38 Desc
Main Document Page 6 of 7

1 are a matter of public record.

2 Respectfully submitted,

3

4

5 Dated: December 26, 2023

ALDRIDGE PITE, LLP

6

7

/s/ Joseph C. Delmotte (SBN 259460)

Joseph C. Delmotte

8 Attorneys for *Respondent/Secured Creditor* THE
BANK OF NEW YORK MELLON FKA THE
9 BANK OF NEW YORK SUCCESSOR TRUSTEE
TO JPMORGAN CHASE BANK, N.A., AS
10 TRUSTEE FOR THE BEAR STEARNS ALT-A
TRUST, MORTGAGE PASS-THROUGH
11 CERTIFICATES, SERIES 2005-04

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
8880 Rio San Diego Drive, Suite 725 San Diego, CA 92108

A true and correct copy of the foregoing document entitled: **Request For Judicial Notice In Support Of Opposition To Objection To Proof Of Claim 2-1 Filed By The Bank Of New York Mellon, Fka The Bank Of New York Successor Trustee To Jpmorgan Chase Bank, N.A., As Trustee For The Bear Stearns Alt-A Trust, Mortgage Pass-Through Certificates, Series 2005-04** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) December 26, 2023, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

U.S. TRUSTEE:

TRUSTEE:

ATTORNEY FOR DEBTOR:

TRUSTEE'S ATTORNEY:
Nathan F. Smith- nathan@mclaw.org

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (date) December 26, 2023, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

PRESIDING JUDGE:

Honorable Theodor Albert
U.S. Bankruptcy Court Central District Of California
(Santa Ana)
Ronald Reagan Federal Building and Courthouse
411 West Fourth Street, Suite 5085 / Courtroom 5B
Santa Ana, CA 92701-4593

DEBTOR:
Jeffrey S Beier
P O Box 7644
Laguna Niquel, CA 92677

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

12/26/2023 Lauren Timby /s/ Lauren Timby
Date Printed name Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.